

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
NECC TELECOM, INC. )  
For a Certificate of Authority to )  
Provide Intrastate Interexchange )  
Telecommunications Services Within )  
The State of Hawaii and for )  
Approval of its Initial Tariff. )  
\_\_\_\_\_)

DOCKET NO. 05-0248

DECISION AND ORDER NO. 22461

Filed May 10, 2006  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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HAWAIIAN PUBLIC UTILITIES COMMISSION

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Docket No. 05-0248

Decision and Order No. 22461

DECISION AND ORDER

By this Decision and Order, the commission grants NECC TELECOM, INC. ("Applicant") a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State") on a resold basis, subject to certain regulatory requirements.

I.

Background

A.

Application

On September 30, 2005, Applicant filed an application seeking a COA to provide telecommunications services in the State on a resold basis ("Application").<sup>1</sup> The Application was filed pursuant to HRS § 269-7.5 and HAR §§ 6-80-17 and 6-80-18.<sup>2</sup>

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<sup>1</sup>On September 30, 2005, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex-officio party to all proceedings before the commission, was served with a copy of the Application. See

Applicant is an Indiana corporation with its principal place of business in Jeffersonville, Indiana. It is authorized to conduct business in the State as a foreign corporation, effective September 2, 2005. Applicant represents that it intends to offer telecommunications services in all 50 states and the District of Columbia.<sup>3</sup>

Applicant is a non-facilities-based provider of telecommunications services. It plans to provide telecommunications services on a resold basis in the State. Applicant represents that it is financially qualified to provide resold telecommunications services in the State and that it is willing and able to properly perform the services that it is proposing under the terms, conditions, and rules adopted by the commission. Applicant asserts that granting it a COA would further the public interest by expanding the availability of competitive telecommunications services in the State.

Upon receiving its COA, Applicant intends to provide a range of intrastate telecommunications services, including "1+"

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Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

<sup>2</sup>By commission letter dated October 31, 2005, Applicant was advised that the commission will be unable to complete its review of the Application until Applicant provides financial statements dated no more than three (3) months from the date of the Application ("Updated Financial Statements"), pursuant to the filing requirements HAR § 6-80-17(c)(1)(E) ("October 31, 2005 Letter").

<sup>3</sup>Applicant states that it is currently authorized to provide intrastate telecommunications services in approximately 45 states and the District of Columbia.

and "101XXXX" outbound dialing, inbound "800"/"888" toll-free, travel card services, and prepaid calling card services.

Moreover, Applicant requests that the commission allow it to keep its books and records in Indiana, while representing that it will make its books and records available to the commission, upon request.

B.

Consumer Advocate's Statement of Position

The Consumer Advocate filed its Statement of Position on January 17, 2006, informing the commission that it does not object to Applicant's COA request, provided that Applicant submits copies of its Updated Financial Statements to the commission and the Consumer Advocate ("CA's Statement of Position").<sup>4</sup>

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<sup>4</sup>Upon Applicant's non-response to the October 31, 2005 Letter, the commission, in a letter dated February 22, 2006, again advised Applicant to submit its Updated Financial Statements and further advised that the commission will commence a proceeding to dismiss the Application if Applicant failed to submit the filing within thirty (30) days of the date of the letter ("February 22, 2006 Letter"). On March 30, 2006, Applicant filed its Updated Financial Statements with the commission and served two (2) copies of the same on the Consumer Advocate, pursuant to the February 22, 2006 Letter.

## II.

### Discussion

#### A.

#### COA

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the commission.<sup>5</sup> HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

Upon review of the Application, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by the resumes of Applicant's key management personnel and the financial statements submitted in support of its Application. The commission agrees with the

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<sup>5</sup>On June 3, 1996, HAR chapter 6-80 took effect. HAR 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

Consumer Advocate's finding that Applicant appears to have the "financial resources to sustain the proposed resold telecommunications services" in the State, if granted the requested COA.<sup>6</sup>

2. Applicant is fit, willing, and able to properly perform the telecommunications services proposed and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations and the documents submitted in support of its claims. Moreover, the commission's grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional service providers in the industry increases competition and provide consumers with options in the State's telecommunications market. As noted by the Consumer Advocate, Applicant's proposed services are in the public interest under "the premise that the introduction of effective competition in the telecommunications industry is desirable to achieve certain benefits that would not be present in a monopolistic environment."<sup>7</sup>

Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide resold intrastate

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<sup>6</sup>See CA's Statement of Position at 4.

<sup>7</sup>Id. at 5.

telecommunications services in the State as described in its Application.

B.

Applicant's Records

Under HAR § 6-80-136, various regulatory requirements of HRS chapter 269 are waived for competitive local exchange carriers ("CLECs") operating in the State. HAR § 6-80-136(a) states, in relevant part:

Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

. . . .

- (3) Requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in the State, as mandated by § 269-8.2, HRS. Instead, the carrier shall promptly provide copies of its out-of-state records and books to the commission upon the commission's request; and

. . . .

HAR § 6-80-136(a)(3).

Applicant is a carrier offering to provide resold telecommunications services on a competitive basis in the State, and Applicant is a CLEC and not an incumbent carrier. Applicant's request to keep its books and records in Indiana is consistent with and contemplated under HAR § 6-80-136(a)(3). As set forth in the rule, specific authorization to keep Applicant's books and records in a state aside from Hawaii is not necessary. However, as clearly set forth in HAR § 6-80-136(a)(3), Applicant

must make its records and books available for inspection, upon commission request.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide intrastate telecommunications services in the State on a resold basis, as described in its Application.

2. As a holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-80 and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

4. Applicant shall conform its initial tariff to the applicable provisions of HAR chapter 6-80. An original and eight (8) copies of Applicant's initial tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariff.



5. Within thirty (30) days from the date of this Decision and Order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street, Room #103, Honolulu, HI, 96813.

6. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); and (B) Decision and Order No. 21847, filed on May 31, 2005, in Docket No. 05-0088. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,<sup>8</sup> 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.


7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

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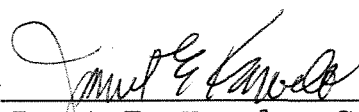
<sup>8</sup>Solix, Inc. was formerly known as NECA Services, Inc.

DONE at Honolulu, Hawaii MAY 10 2006.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

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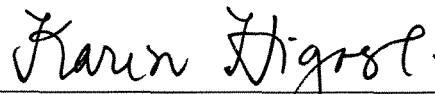
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22461 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

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1720 Windward Concourse, Suite 250  
Alpharetta, GA 30005

Attorney for NECC TELECOM, INC.

  
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Karen Higashi

DATED: MAY 10 2006